Case and Comment
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Our Chaotic System of Taxation

By *ELIAS GATES, of the Memphis Bar*

THE Federal government and state government, as independent sovereigns functioning in their respective capacities, and the minor agencies,—the counties and municipalities, busily engaged and vying with each other in indulging in wild orgies of extravagance in their expenditures—seek to adjust income to expenditures, seemingly unmindful that expenditures ought to be adjusted to income. Each of these agencies pursues its own course and way, acting independently and in utter disregard of what the others may be undertaking, each seeking to accomplish its own ambitious projects and with rash inconsideration of what the others are doing; and yet, while theoretically each is operating in its own sphere, nevertheless the members of one body politic are part of each one of those other bodies politic.

There is the inevitable duplication of effort. You may ask, why a jail and a police station in the one community, both of which serve one purpose—the detention of offenders pending trial? The Federal nisi prius courts—long the pride of our people—have to-day, by reason of the determination of the government to punish the minor offenders, taken on the aspect of the ordinary police or magistrate courts; and may I remark that the spectacle of the Federal government—the embodiment of the ideals, the aspirations, the forces of a hundred million people—prosecuting some minor offender for a slight misdemeanor has an almost ludicrous aspect, and we are reminded of David's remark:

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"For the King of Israel is come out to seek a flea, as when one doth hunt a partridge in the mountains."—1 Samuel, chapter 26, v. 20.

But not content that the sovereigns,—that is, the Federal and state governments,—and the agencies of the latter,—namely, the counties and municipalities,—are exercising the power of taxation, it is now the habit of the states to indulge in the creation of minor satellites,—the specially created boards of districts, improvement, road, street, levee, irrigation, reclamation, drainage, and maybe others that I have unintentionally overlooked,—each undertaking to accomplish the object of its creation by the levy of special assessments, without limit and without stint, even unto the point of confiscation, if we are to give credence to the reports of the conditions prevailing in this behalf in one of our great commonwealths.

Each government and governmental agency now acts independently of the other, levying and measuring its taxes by its expenditures, and not by the hardship or burden that the cumulative taxes of all assessing agencies may load upon the taxpayer. Each government and its agencies seem possessed of diabolical ingenuity in devising ways and means and objects of taxation.

For assessment purposes, property may have a legal, superimposed upon an economic aspect, and each be deemed a unit for the purpose of taxation; wherefore it follows that the res may be taxed as a unit to the owner of it, and that the indebtedness which he owes, and which is secured by mortgage upon the res, may be taxed to the holder of the obligation, for which the identical res is pledged as security. Then, too, we find the merchant with heavy receivables as well as heavy payables. Deducting the latter from the former, he may find his net wealth to be of an inconsequential nature, yet the state looks merely to the receivables as constituting wealth, and ignores the payables in ascertaining a basis for taxation; for the legislature knows well the ways of addition, but forgets the ways of subtraction.

We are also afflicted with indirect taxes, capitation or poll tax, license tax, privilege tax, excise tax, ad valorem tax, property tax, mortgage tax, transfer tax, succession tax, inheritance tax, estate tax, normal tax, surtax, transportation tax, insurance tax, beverage tax, cigar and tobacco tax, admissions and dues tax, stamp tax, drainage tax, levee, irrigation, reclamation, road, front-foot, park fairgrounds, hospital, school, library, and other special taxes, and so on ad infinitum, until we have a veritable "cataract of Lodore" in taxation.

Politically and geographically, territorial boundaries divide this country into many states. In all aspects, save from a political and territorial viewpoint, commerce and highly developed transporta-

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tion have wiped out these boundary lines, so that, economically viewed, the states form a compact whole. Yet there is little, if any, restraint on the power of each of these sovereign states to tax whatever may be within it, regardless of the locus of the owner, and the Supreme Court of the United States has adverted to the "necessity of caution in cutting down the power of taxation upon the strength of the 14th Amendment." Wheeler v. Sohmer, 233 U. S. 434, 58 L. ed. 1030, 34 Sup. Ct. Rep. 607. Nor does that Amendment restrain double taxation, nor does it prevent unequal taxation, so long as the inequality of taxation is not based upon arbitrary distinctions. St. Louis Southwestern R. Co. v. Arkansas, 235 U. S. 367, 59 L. ed. 273, 35 Sup. Ct. Rep. 99. And, in keeping with that, all bills receivable, obligations, or credits, however evidenced, arising from business done within the state, may be assessed within the state and at the business domicil of a nonresident. (New Orleans v. Stempel, 175 U. S. 309, 44 L. ed. 174, 20 Sup. Ct. Rep. 110), for it is said: "It was the situs of the debt which determined the legality of the taxation in all of the cases and united them under the principle expressed in Metropolitan L. Ins. Co. v. New Orleans, 205 U. S. 395, 51 L. ed. 853, 27 Sup. Ct. Rep. 499, that the law regards the place of the origin of negotiable paper as its true home, to which it will return to be paid, and its temporary absence can be left out of account." Wheeler v. Sohmer, 233 U. S. 444, 58 L. ed. 1039, 34 Sup. Ct. Rep. 607.

While, on the other hand: "Negotiable paper representing the credits so taxed has such tangible form as to be of itself a taxable entity, other than that of the obligation it represents." Wheeler v. Sohmer, 233 U. S. 434, 58 L. ed. 1030, 34 Sup. Ct. Rep. 607.

And so, again applying the maxim "mobilia sequuntur personam," the membership in an exchange, being personal property without a fixed situs, has a taxable situs at the domicil of the owner (Citizens Nat. Bank v. Durr, 257 U. S. 99, 66 L. ed. 149, 42 Sup. Ct. Rep. 15); while, on the other hand, it is competent for the state to fix the situs of the membership for taxation, whether held by resident or nonresident, in the place in the state where the exchange is located (Rogers v. Hennepin County, 240 U. S. 191, 60 L. ed. 599, 36 Sup. Ct. Rep. 265). And still other illustrations might be added. So, withal, we have:

"Chaos erected into a system, with no loss of the chaotic and with no system."

Undeniably, the seriousness of the situation is intensified by the incessantly increasing rate of taxation. Nor are the augmented taxes of much avail, for disbursements constantly outrun receipts. Our plight is deplorable. The fruits of the tax levies are anticipated

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long in advance of their collection, and overdrafts have displaced balances. We exhaust the present and disable the future. Egotistically and in a spirit of selfishness we assume that the civilization of to-day narks the ultimateness of progress, and that, in fulfilling and satisfying our needs and requirements, we have anticipated and met those of the coming generations. In an endeavor to carry on, the present borrows from posterity with small purpose of meeting its obligations, and invites and sanctions bond issue upon bond issue, mortgage upon mortgage, pledging the present and chaining the future, until even all eternity, with the aid of our venerable friend Diogenes, will be unable to find a vestige of an equity of redemption. . . .

We have reviewed, we have criticized. We have condemned. Well may you ask, Is there no relief? Is there no cure? Is there no panacea? Those questions, only he days to come can answer. There will be no surcease, no staying of the onward march of the disease, until there is a restoration to sanity in the administration of public affairs and public finances, a realization that expenditures must be fitted to the income, and the development of a spirit of denial in government, as well as in private affairs. There must be retrenchment and an elimination of duplication of effort, of waste, and of extravagance. There must be a recognition that the principle of thrift is a virtue that is as vital to the well-being and the success of governmental undertakings as of individual ambitions. There must be ingrained in the public mind the fixed determination to abandon their present evils, and in a spirit of reform to adopt as a policy that the undertaking of all projects, and the imposition of taxes to accomplish the same, shall be fitted to the ability of the individual to meet and discharge the same—not that the individual shall be whipped into meeting the same, regardless of the hardship which it may impose upon him.

The national government made a beginning, when Congress passed "An Act to Provide a National Budget System and an Independent Audit of Government Accounts, and for Other Purposes," which was approved June 10, 1921.

We must no longer listen to the sophistry of those who argue that ability to undertake and to accomplish is measured by the ability to mortgage, forgetful that the bequest of the burden must necessarily handicap the future in its ambition to attain and realize its ideals; for the present is blind that cannot and does not see that the future will be equally ambitious.

Apart from the inculcation of this homely philosophy of Poor Richard, order must be brought out of chaos. We must develop coordination between nation, state, county, and municipality. Independence of action must yield to

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co-ordination. No longer should each be permitted to pursue its uncontrolled way. There should be abolition of four or more taxing agencies, and their consolidation into one, so that the taxes levied shall be proportioned to the ability of the taxpayer to pay and discharge his governmental obligations, rather from the present viewpoint of governmental requirements and demands.

That this can be accomplished in a day is not reasonably to be anticipated, but then it is true that no great reform was ever brought to pass quickly. Each of the Amendments to the Constitution, from the 13th to the 19th, inclusive, is the fruit of decades of agitation, and when once the people awaken to a full realization that we invite disaster if we continue in our present reckless, headless, foolhardy, and chaotic methods of raising money for governmental purposes, there will be added another amendment to the Constitution.—From Address Delivered as President of the Tennessee Bar Association before that Body on May 30, 1922.

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Fore!

WITH the advent of the golfing season, a consideration of the recent New Jersey case of Toohey v. Webster, 117 Atl. 838, annotated in 23 A.L.R. 440, is timely.

Plaintiff, a boy thirteen years of age, was caddying on a golf course for a player engaged in a twosome on the third hole, while defendant was engaged in a threesome on the fourth. On this course the third hole is laid out at an angle to the fourth, the third green being much nearer the line of the fourth hole than its tee is, and this third green is only 8 feet away from the midway bunker on the fourth fairway. Defendant, driving from the fourth tee, had sliced his ball into the rough over towards the third fairway, and as he got ready for his second shot plaintiff's employer holed out on the third green and started for the fourth tee, while plaintiff started across towards the midway bunker on the fourth fairway, as was customary, to await his employer's next drive, and had taken only two or three steps when he was struck in the eye by defendant's ball on his second shot. Defendant testified that he called "Fore!" before addressing the ball; others testified that they heard no such warning. It was held that defendant was under a duty to use reasonable care to observe whether there were any persons in the general direction of his drive, who might be endangered thereby, and, if so, to see that they were adequately warned in order that they might be on guard, and that the questions of defendant's negligence, and the plaintiff's contributory negligence or assumption of risk, were properly left to the jury.

This, apparently, is the only reported case which has passed upon the liability of a player for injury to a caddie, resulting from being struck by a driven ball.

It should be remarked that there was a dissent recorded in the case, the view being taken that the caddie assumed the risk of injury which he sustained, and that he was guilty of contributory negligence in going upon the fairway of the hole, which his employer was not playing, where he was struck.

The author of an article in 31 Scot. L. Rev. 194, cites the case of Andrew v. Stevenson, decided in 1906 in the Edinburgh sheriff's court, where the defendant was held not liable for hitting the plaintiff with a golf ball which he had sliced, the plaintiff not having been in the general direction of the drive.

It also has been determined that a golf club which, for the convenience of its members, provides cad-

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dies, who are hired and supervised by its own employee, is the employer of a caddie injured while in the performance of his duties, within the operation of the California Workmen's Compensation Act, although the club member utilizing the services of the caddie directed his activities while so doing, and furnished the compensation therefor. It was so held in Claremont Country Club v. Industrial Acci. Commission (1917) 174 Cal. 395, 163 Pac. 209, L.R.A.1918F, 177, where an award of compensation to a caddie for injuries caused by the breaking of the handrail of a small bridge on the defendant club's golf course was affirmed.

And both the golf club and the player driving the ball have been held liable for injuries to a passer-by on a near-by street, caused by a ball which had been played from the course falling therein—the club, on the theory that the proximity of the course to the highway, and the consequent frequency with which driven balls fell in the highway, made that particular part of the course a nuisance so as to render the club liable for the injury complained of, and the player, apparently, on the theory that he was negligent in driving while there was someone in the highway who might be injured by a misdirected drive. This conclusion was reached in Castle v. St. Augustine's Links (1922) 38 Times L. R. 615.

Law and Grace

A FEW months since, Chancellor I. H. Peres, of Memphis, Tennessee, overruled, on legal grounds, the petition of the Convent of the Good Shepherd for a release of the lien of certain taxes. The petitioners showed that they had no funds out of which to pay the taxes, but were themselves suppliants for charity to aid them to carry on their work in aid of the unfortunate. The opinion concludes with the following unusual paragraph: "The court is aware of the fine function of petitioner, and as an official cannot assist them in this matter, and the petition is denied, and the tax declared a lien, and must be paid to the government; but as an individual the court, for himself and his brother, agrees to pay the amount set opposite here,—$10,—and suggests that any others charitably inclined chip in."

We may add that the entire amount necessary to pay off the taxes was raised. The spectacle of a judge, in the goodness of his heart, personally raising the money in a meritorious case to pay off a judgment made necessary by his decision, is as novel as it is commendable.

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Damages for Failure to Furnish or Interruption of Telephone Service

IT IS often difficult to prove with exactness the damages which one sustains from interruption of or failure to render telephone service, so far as the money value is concerned. This may, in fact, be said to be generally true. And the majority of the cases hold that under certain circumstances, at least,—such as notice to the telephone company of the nature of the message,—damages may be recovered for mental suffering, annoyance, and inconvenience due to failure of the company to perform its duty with respect to the rendering of telephone service. The question is, however, affected in some jurisdictions by the nature of the action, whether it is based on breach of contract or sounds in tort.

A number of cases intimate that the compensatory damages which may be recovered for failure of a telephone company to perform its duty to furnish telephone facilities and to render proper service are not limited necessarily to the mere monetary loss which the injured party may be able to prove as a result of this neglect or failure of the company, but may include such elements as annoyance, inconvenience, and loss of time, and in some cases even mental or physical suffering. In Chesapeake & P. Teleph. Co. v. Carless, 127 Va. 5, 102 S. E. 569, annotated in 23 A.L.R. 943, which was an action for damages for injury caused by a wrongful suspension of telephone service which continued over a period of sixteen days, it was held that although the plaintiff, who was a trained nurse, failed to show affirmatively any actual pecuniary loss or damage, she might recover in an action of tort compensatory damages for physical hardship in exposure to severe weather, which was shown on one occasion, and was due to suspension of telephone service, and might recover for inconvenience and annoyance in the conduct of her calling as a nurse and in her affairs generally. The verdict in this case was for $600 damages.

Mere failure of a telephone company to repair a break in a patron's service line is held in the New Hampshire case of Barrett v. New England Teleph. & Teleg. Co. 117 Atl. 264, not to render it liable for loss of his property, due to his inabilty to summon the fire department when the building takes fire, where there is nothing to charge the company with knowledge of likelihood of special damages in case it fails to act.

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Electrical Induction, Conduction, or Electrolysis

MOST of the litigation due to the escape of electricity from the control of a person employing it in some enterprise has arisen between telephone companies using the earth as a return circuit, and street railways using the single trolley system, employing the rails as a return circuit.

In the English case of Eastern & S. A. Teleg. Co. v. Cape Town Tramways Cos. [1902, P. C.] A. C. 381, 2 B. R. C. 114, 71 L. J. P. C. N. S. 122, 50 Week. Rep. 657, 86 L. T. N. S. 457, 18 Times L. R. 523, it was held that the doctrine in Rylands v. Fletcher, L. R. 3 H. L. 330, 37 L. J. Exch. N. S. 161, 19 L. T. N. S. 220, 1 Eng. Rul. Cas. 256, 6 Mor. Min. Rep. 129, was applicable generally to one storing or having under his control electricity, but that in the case of an interference with a single-wire telephone service by electricity conducted from the rails of an electric railway, the doctrine was not applicable, there being no injury to person or property in the strict sense.

A majority of the American cases on the subject have reached the same conclusion, namely, the nonliability of a street railway company, in the absence of negligence, for damage by conduction to a telephone company—some on the ground that the telephone is not, while the street railway is, a street use, and others on the ground that both stand on an equal footing and that the telephone company can more easily and cheaply remedy conditions.

One maintaining under lawful authority a high-tension electric line along a public highway was held not liable, in the Washington case of Phillippay v. Pacific Power & Light Co. 207 Pac. 957, 211 Pac. 872, to the owners of a previously constructed telephone system, rightfully constructed along the highway, for the cost of substituting a metallic return circuit for the earth as formerly used, which is made necessary by induction from the high-power line which interferes with the use of telephone instruments. The court points out that, in making use of the earth for its return current, the telephone company was making use of something which it did not own, and as a consequence it is held that the duty rested on it to equip its line so as to prevent interference therewith; nor could the telephone company claim any superior right in the highway by reason of priority. The

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note which accompanies the report of this case, in 23 A.L.R. 1251, reviews the decisions on the subject.

It may be added that continuing injury to water mains by electrolysis due to the action of electricity escaping from the rails of a street railway using the single-trolley system will be restrained, there being no way for the water company to avoid the injury, and it being within the power of the railway company to do so. Peoria Waterworks Co. v. Peoria R. Co. 181 Fed. 990. And where a single-trolley road is negligently constructed and operated, which enhances, and possibly entirely causes, electrolysis to water pipes, the company will be restrained from continuing to operate the road in such condition. Dayton v. City R. Co. 26 Ohio C. C. 736.

Stare Decisis

NATURALLY, with our courts established and patterned after the English, there has come to us, as a part of Anglo-Saxon jurisprudence, the value of precedent and the disposition of judges not to disturb settled points. This is the whole doctrine of "stare decisis." And yet some of us, in times of disappointment over cases lost, have been tempted to attribute this disposition of judges, this doctrine of "stare decisis," to their mental laziness; that is, to an unwillingness of the courts to analyze and verify the work of their predecessors. But the real basis of this rule is its trueness to human nature. All of us will agree that history repeats itself, and this is so because history is largely a record of humanity. What more natural presumption than that the courts, learned, but none the less human, will, like history, or any normal individual, do again the same thing under similar circumstances?

From this belief that the court, like history, will repeat itself, has come the idea that the citizen has the right to take it as a fact and to act upon it in his everyday affairs, and that benefits accruing to him from business done in the light of, and guided by, these court decisions, will take the form of vested rights, which even the courts are estopped to disturb, although they may believe the precedent erroneous. It has been repeatedly adjudged that "substantial justice may often be better promoted by adhering to an erroneous decision than by overthrowing a rule once established." Harsh and anomalous as this rule may seem for a court of justice, it is really not in conflict with that higher law which requires that the court should be *right*. . . .

The courts, a human as well as government instrumentality, made the law of "stare decisis," and it is undisguisedly a law of the courts, for the courts, and by the courts; but, being human, they always have and always will prevent, as far as is humanly possible, individual wrong under the guise of universal law. And in doing this they refuse to be frightened by the specter of a fluctuating law into adhering to a decision which a more thorough discussion and maturer reflection convince them was fundamentally wrong in the beginning, or is fraught with danger to society in its progress.

—From Address of Hon. C. S. Nunn before the Kentucky State Bar Association.

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Right of Accused to Communicate With His Attorney

A PERSON accused of crime has the right to communicate with, and to consult privately with, his attorney. This right is often guaranteed by constitutional provision, and the constitutions are frequently supplemented by statutes on the subject, some of which particularly concern the matter of consultation. As, for example, "The counsel of any person accused of crime shall have free access to him at all reasonable hours."

In People ex rel. Burgess v. Riseley, 13 Abb. N. C. 186, 66 How. Pr. 67, 1 N. Y. Crim. Rep. 492, the relator, committed in default of bail to await the action of the grand jury upon a charge of burglary, applied for a mandamus to compel the sheriff to allow him a private interview with his counsel. The court, in granting the motion, said: "It is said, however, that there is no indictment as yet against the relator, and that therefore the constitutional provision does not apply. This is also, it seems to me, a narrow interpretation of the fundamental law. The relator is in jail, and adjudged probably guilty of a grave crime. He has rights even before indictment. He may claim, perhaps, that his detention is illegal; that the evidence taken before the magistrate was insufficient; and may desire, through counsel, to obtain a writ of habeas corpus, or some other process, to inquire into the legality of his imprisonment. He needs for all this counsel competent to advise, and a private interview for consultation. Is he to be deprived of this because the letter of the fundamental law does not give it? Or shall the spirit which procured the adoption of the provision be invoked to give it life? . . . No good reason can be assigned why the word 'trial,' occurring in the Constitution, should be construed to mean the final inquiry upon the accusation only, and not any and every step which may be taken to inquire into the imprisonment. It should, to give force and effect to the spirit which prompted it, be so construed as to give to everyone accused of or arrested for crime the benefit of counsel at every step and stage of the proceeding. . . . The sheriff may, of course, take proper precautions to see that no instrument of escape shall be conveyed to the prisoner, and may, also, if he has good reason to suppose that

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the consultation with the prisoner will be used for an improper purpose, apply to the court for further instructions."

Refusal to postpone a criminal trial is held to be reversible error, under the Texas Constitution and statute, in Turner v. State, 91 Tex. Crim. Rep. 627, 241 S. W. 162, annotated in 23 A.L.R. 1378, where it appears that, from the time of their incarceration until the day before the trial, the defendants were, by the officer who had them in custody, denied the privilege of a private conference with their counsel, the sheriff refusing to permit any conversation between them and their counsel, except in his presence. In this case an order had been obtained from the judge of the trial court, directing the sheriff to afford an interview, but he declined to comply with it.

In Nothaf v. State, 91 Tex. Crim. Rep. 378, 239 S. W. 215, 23 A.L.R. 1374, the appellate court, in holding that the question was not brought before them properly, states in substance that in a proper case it would be ground for reversing a judgment of conviction that an officer, in whose custody a prisoner was placed, should impair the exercise of the constitutional right to counsel by wilfully preventing such prisoner's consultation and communication with his counsel, calling attention to the Texas statute making such an act by such officer a penal offense.

The remedy, where the sheriff or jailer refuses to permit a prisoner to consult privately with his counsel, is by mandamus, or by motion for a postponement or continuance of the trial.

It has been held in a number of cases that it is not error to admit in evidence a confession of the prisoner, over the objection that, before making the alleged confession, the prisoner had been refused an opportunity to communicate with counsel. Territory v. Chung Nung, 21 Haw. 214; State v. Neubauer, 145 Iowa, 337, 124 N. W. 312; McCleary v. State, 122 Md. 394, 89 Atl. 1100; State v. Murphy, 87 N. J. L. 515, 94 Atl. 640; Geiger v. State, 25 Ohio C. C. 742.

Delaware State Bar Association

Delaware now has a State Bar Association. There has been for some time a County Bar Association in each of the counties of the state. These are now supplemented by the new organization, which has chosen the following officers: President, Josiah Marvel, Wilmington; first vice president, John Biggs, Wilmington; second vice president, Henry Ridgely, Dover; third vice president, Charles W. Cullen, Georgetown; secretary, Leonard E. Wales, Wilmington; treasurer, Thomas C. Frame, Jr., Dover.

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Power of Court to Amend Judgment After Affirmance

A TRIAL court is held, in United States v. Howe, 280 Fed. 815, to have no power, even during continuance of the term at which it was rendered, to alter or amend a judgment after it has been affirmed by an appellate court.

This decision is in accord with the few other cases passing on the point, as appears by the note which accompanies it in 23 A.L.R. 531. In the case last mentioned a writ of mandamus was granted to compel a trial court to vacate an order setting aside a sentence previously imposed and affirmed by the reviewing court, it appearing that after the sentence was affirmed and the cause remanded the trial court set aside a sentence of six years' imprisonment and resentenced the defendant to a term of three years.

Similarly, if a judgment including sentences on various counts of an indictment has been affirmed as to some of the counts, and reversed as to the other or others, it is not within the power of the trial court to change the sentence on any of the counts with respect to which the judgment has been affirmed. Morris v. United States, 107 C. C. A. 293, 185 Fed. 73.

And it has been held that a trial court has no power to remit a fine imposed for contempt of court, after affirmance by a reviewing court. Re Griffin, 98 N. C. 225, 3 S. E. 515.

A change in a sentence after affirmance by a reviewing court is invalid, whether the change is prejudicial to the defendant, or to his advantage.

The fact that a statute provides for an alternative punishment of hard labor on the failure of a defendant to pay a fine does not warrant the trial court in imposing the punishment of hard labor after a judgment for a fine only has been affirmed by a reviewing court. Re Newton, 94 Ala. 431, 10 So. 549.

Likewise, it has been held that after a sentence of labor in a chain gang has been affirmed, and the term of court has expired during which the sentence was imposed, the trial court does not have the power to impose a sentence of a fine, or of labor in a chain gang if the fine is not paid. Porter v. Garmony, 148 Ga. 261, 96 S. E. 426, which further held that mandamus against the sheriff was not the proper remedy to obtain the enforcement of the original sentence, in the absence of a bench warrant or order for the execution of the original sentence and a failure to comply therewith by the sheriff.

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Misrepresentations Affecting the Validity of Marriage

MISREPRESENTATIONS or fraud relating to accidental matters, such as rank, family, fortune, habits, temperament, or the like, do not go to the essence of a marriage contract, and are held not to be sufficient grounds for annulment of the marriage, in the case of Brown v. Scott, 140 Md. 258, 117 Atl. 114, annotated in 22 A.L.R. 810. But when the fraud relates to essential matters, affecting the well-being of the parties, it is sufficient. This phase of the rule was applied in the foregoing case, where it was determined that the marriage of an immature schoolgirl to an ex-convict, who at the time of marriage had committed a crime for which he was subject to indictment, will be annulled, when it was brought about by his false representations as to his standing in society and his war record, so that not only would life with him be abhorrent to a person of ordinary instincts and refinement, but every purpose of the marriage relation would be defeated. Similarly, the marriage of a woman twenty-two years of age, which had been induced by false representations that defendant was a captain in the United States Army, that he came of a family of wealth and prominence, that he had been admitted to practise medicine, and that he was honest and of good character, was annulled for fraud, in Dooley v. Dooley, 93 N. J. Eq. 22, 115 Atl. 268. So the marriage of a schoolgirl was annulled in the Maryland case of Corder v. Corder, 117 Atl. 119, for misrepresentations by the husband as to his moral habits. And in O'Connell v. O'Connell, 201 App. Div. 338, 194 N. Y. Supp. 265, a marriage which had been induced by the husband's misrepresentations that he was a man of good personal habits, and not addicted to the use of drugs, was annulled for fraud.

The decided weight of judicial authority, however, is to the effect that misrepresentations or mistake as to the birth or situation in life of one of the parties to a marriage is insufficient to avoid the marriage. "If they should be so held," states the court in Wier v. Still, 31 Iowa, 107, "where would courts fix the limits of invalid marriages? It would open a field for judicial investigation at once extensive and most detrimental to society." "Fabrications and exaggerations of this kind," observed the court in

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Keyes v. Keyes, 6 Misc. 355, 26 N. Y. Supp. 910, "while not commendable, are so common as to be tolerated by the law on grounds of public policy. Persons intending to act upon such representations must verify them at their peril, for, though they enter into the inducements to marriage, they are not considered as going to the essentials of the relation, on the theory that the parties take each other for better or worse. Indeed, in some cases, marriage likens itself to the veritable mousetrap, which is 'easier to get into than out.'"

The earlier cases on this question are gathered in a note in 14 A.L.R. 121.

Blind Husbands. A man who was reporting the disappearance of his wife to the police was unable to recall her first name or the color of her eyes. He could not remember whether she was a blonde or a brunette. Said he had only been married for five years and didn't know her very well. As husbands go, we should say that this was not a particularly observing one. How does he know his wife has gone? Maybe she is in the next room.

If a man is married ten years before he can describe his wife's features, how would it be with some of these repeaters who have had three or four wives? They wouldn't be able to recognize them on the street.

A man who cannot tell whether his wife is a blonde or a brunette should be reasonably happy. He would be easy to suit.

—Los Angeles Times.

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Recent Important Cases

Assignment for creditors — *provisions for continuance of business.* That provisions authorizing the assignee to continue the business and delay sale of the assets until they can be wisely and prudently reduced to money do not invalidate such assignment, is held, in Rodgers v. Boise Asso. of Credit Men, 33 Idaho, 513, 196 Pac. 213, annotated in 23 A.L.R. 195.

Automobiles — *duty of municipal corporation to obtain license to operate.* A statute exempting municipal property from taxation is held, in State v. Preston, 103 Or. 631, 206 Pac. 304, not to relieve the municipality from the necessity of obtaining a license to operate motor vehicles on the public highways, although the fees are designed in part for raising revenue for governmental purposes, where the licensing statute expressly provides for the exemption of certain other vehicles from its operation.

A note on the applicability of motor vehicle regulations to public officials or employees, accompanies this case in 23 A.L.R. 414.

Banks — *stock liability for debts — effect of payment of assessment to replace impaired capital.* Compliance by stockholders of a bank with a notification by the banking department, in accordance with statutory authority, to levy an assessment to make good impaired capital, is held not to relieve them from the constitutional liability for debts to the amount of capital stock held by them in case the bank subsequently proves to be insolvent, although the banking department had no authority to enforce payment of the assessment, in the Washington case of Duke v. Force, 208 Pac. 67.

Payments by stockholders applicable upon double liability, is the subject of the note appended to this case, in 23 A.L.R. 1354.

Brokers — *right to commissions — lease with option to purchase.* A broker employed to secure a purchaser for real estate is held entitled in the District of Columbia case of Campbell v. Rawlings, 280 Fed. 1011, annotated in 23 A.L.R. 854, to his commissions when he effects a sale by means of a lease, with option to purchase which is exercised.

Brokers — *contract for permanent commission — right to terminate.* That a manufacturer who agrees to pay a broker a commission on sales at any time in the future, to new customers procured by such broker, cannot terminate the contract at will, is held in the Massachusetts case of Hewins v. Marlboro Cotton Mills, 136 N. E. 159, annotated in 23 A.L.R. 449.

Burglary — *breaking — pushing open door.* Pushing open a door entirely closed is held, in Cooper v. State, 83 Fla. 34, 90 So. 693, 23 A.L.R. 109, to be a sufficient breaking to sustain a conviction for breaking and entering a dwelling house.

Carrier —*liability of sleeping car company for refusing accommodations.* The right of a sleeping car company to require the purchase and exhibition of tickets and to promulgate and enforce rules with respect to the operation of its cars is held not to absolve it from liability for negligence in refusing to furnish accommodations in accordance with tickets purchased, in Pullman Co. v. Walton, 152 Ark. 633, 239 S. W. 385, annotated in 23 A.L.R. 1298.

Charity — *liability for negligence of nurse.* On grounds of public policy, a charity hospital which has exercised ordinary care in the selection and retention of a nurse is held, in the Virginia case of Weston v. Hospital of St. Vincent of Paul, 107 S. E. 785,

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not liable for death of a pay patient due to the negligence of the nurse.

A note on the liability of a privately conducted charity for personal injuries, is appended to the foregoing case, in 23 A.L.R. 907.

Constitutional law — *police power — requiring undertaker to have embalmer's license.* That the police power does not extend to requiring every undertaker to have an embalmer's license, is held in the Wisconsin case of State ex rel. Kempinger v. Whyte, 188 N. W. 607, annotated in 23 A.L.R. 71.

Contract — *for sale of chattels — Statute of Frauds — promise to discharge existing debt.* That a mere oral agreement to discharge an existing indebtedness is not sufficient part performance of a contract for sale of chattels to comply with the requirements of the Statute of Frauds, is held in Scott v. Mundy, 193 Iowa, 1360, 188 N. W. 972.

The question of discharge of existing debt (or crediting indebtedness) as part payment which will take contract out of Statute of Frauds, is treated in the note appended to this case, in 23 A.L.R. 460.

Evidence — *burden of proof — negligence of bailee.* In an action by the bailor against a bailee for hire to recover the value of cattle, which the bailee has failed to deliver to the bailor, where the cattle have been in the exclusive possession of the bailee, the burden of establishing negligence is held, in Smith v. Maher, 84 Okla. 49, 202 Pac. 321, annotated in 23 A.L.R. 270, to rest upon the bailor, but this burden is satisfied when the bailor has shown a delivery of the property in good condition to the bailee, and a failure or refusal by the bailee to make delivery of the cattle upon demand, and such evidence on the part of the bailor is prima facie evidence of negligence, and is sufficient to cast upon the bailee the burden of explaining his failure to return the cattle.

Evidence — *of negligence — foot projecting beyond elevator.* The mere fact that the foot of a passenger in an elevator projects slightly through the door beyond the floor of the elevator is held not to show that he is not exercising ordinary care, in the Nevada case of Smith v. Odd Fellows Bldg. Asso. 205 Pac. 796, which is followed in 23 A.L.R. 38, by a note on contributory negligence of an elevator passenger in permitting part of body to project beyond car.

Evidence — *sufficiency — parol trust.* To establish a parol trust in real estate, it is held, in Lefkowitz v. Silver, 182 N. C. 339, 109 S. E. 56, annotated in 23 A.L.R. 1491, that the evidence must be strong, cogent, and convincing.

Fish — *title to fish taken by trespasser.* That title to mussels taken by trespassers from the bed of a stream, title to which is in the riparian owner, inures at once to the owner of the land, is held in Gratz v. McKee, 270 Fed. 713, annotated in 23 A.L.R. 1393.

Health — *powers of board — designating plans for purifying water.* General power conferred upon a board of health to abate nuisances is held in Purnell v. Maysville Water Co. 193 Ky. 85, 234 S. W. 967, annotated in 23 A.L.R. 223, not to include authority to require a water company which is complying with its contract to supply a municipal corporation with pure water from a specified source, to install any particular kind of plant for sedimentation, filtration, or chlorination for the further purification of the water.

Highway — *use for delivery of coal.* An occupant of property abutting on a highway is held entitled to use the highway as a place of delivery of coal for use in his household, even though it causes temporary obstruction of the use of the street by the public, in the Missouri case of Searcy v. Noll Welty Lumber Co. 243 S. W. 318.

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A note on the right to deposit goods in the street as an incident of loading or unloading, follows this case in 23 A.L.R. 813.

Homicide — *delirium tremens as defense.* That delirium tremens is no defense to homicide if it does not develop until after the killing, is held in People v. Toner, 217 Mich. 640, 187 N. W. 386, annotated in 23 A.L.R. 433.

Incompetent person — *application for guardianship — necessity of notice.* A statutory provision that a petition for guardianship of an alleged incompetent may be presented to the judge, who may appoint a temporary guardian, is held not to authorize such appointment without notice to the incompetent, in McKinstry v. Dewey, 192 Iowa, 753, 185 N. W. 565, annotated in 23 A.L.R. 587, where it is in a section of statute providing that in petitions for guardianship all the rules of ordinary actions shall govern so far as applicable, and it is immaterial that it has been customary to do so.

Insurance — *automobile — provision for fire extinguisher — inability to recharge — effect.* The fact that a fire extinguisher carried on an automobile had been exhausted in extinguishing a fire in the car, and that the owner had been unable to have it recharged prior to a second fire, which consumed the car, is held in, the Arkansas case of Union Marine Ins. Co. v. High, 239 S. W. 741, annotated in 23 A.L.R. 24, not to take the loss out of the operation of a provision in the insurance policy that insured will at all times carry an extinguisher on the car, and use due diligence to maintain it in full and complete working order; and the fact that the extinguisher might not have been effective if present is immaterial.

Insurance — *standard policy — statutory limitation.* A provision in a standard insurance policy provided by the laws of this state reads as follows: "No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the assured with all the foregoing requirements, nor unless commenced within twelve months next after the loss occurred." It is held, this constitutes a statutory limitation, and not a contractual limitation, in George v. Connecticut F. Ins. Co. 84 Okla. 172, 200 Pac. 544.

The note appended to this case in 23 A.L.R. 97, discusses the applicability to limitation prescribed by a policy of insurance or by special statutory provision in relation to insurance of provisions of Statute of Limitations extending time or fixing time when action is deemed commenced.

Landlord and tenant — *place to pay rent.* Where a lease for the payment of rent for the use of real property is silent as to the place of payment, it is held, in the Nebraska case of House v. Lewis, 187 N. W. 784, annotated in 23 A.L.R. 877, that the law fixes the place of payment upon the leased premises.

Limitation of actions — *certificate of deposit.* That the Statute of Limitations does not begin to run upon a certificate of deposit until demand made, is held in Emerson v. North American Transp. & Trading Co. 303 Ill. 282, 135 N. E. 497, annotated in 23 A.L.R. 1.

Marriage — *misrepresentation as to divorce.* A marriage between members of a religious denomination which forbids the marriage of divorced persons, it is held, in Bannon v. Bannon, 50 Wash. L. Rep. 22, annotated in 23 A.L.R. 178, will not be annulled because one of the parties fraudulently represented that he had not been divorced, and the other would not have married had she known the truth.

Master and servant — *injury on station platform — liability for unsafe condition.* That a station platform is not, so far as an engine fireman is concerned, within the meaning of the Federal Employers' Liability

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Act, making the employer liable for injuries resulting from defects in cars, engines, appliances, machinery, tracks, roadbed, works, or other equipment, is held in the Missouri case of Elliott v. Payne, 239 S. W. 851.

The question of what is embraced by the words "works," "ways," "equipment," "machinery," etc., in employers' liability acts, is discussed in the note appended to the foregoing case, in 23 A.L.R. 706.

Master and servant — *excuse for disobeying orders.* An employee, it is held, in Marbury Lumber Co. v. Jones, 206 Ala. 669, 91 So. 623, is not relieved from the charge of contributory negligence in disobeying the orders of the president of the corporation by which he is employed, and performing the work assigned to him in a dangerous manner, by the fact that the secretary of the corporation stated that he would stand between him and the president.

A note on contributory negligence or assumption of risk in disobeying rules or directions of a master under counter directions by a superior, is appended to the foregoing case, in 23 A.L.R. 309.

Master and servant — *liability for injury through inherently dangerous act.* The owner of a building is held liable, in Besner v. Central Trust Co. 230 N. Y. 357, 130 N. E. 577, for injury to an employee of one contracting to install doors at the elevator openings on the various floors, by the negligent operation of the elevator by an independent contractor, since such installation may become inherently dangerous by such operation.

The subject of non-delegable duty of an employer with respect to work which is inherently or intrinsically dangerous, is discussed in an extensive note following this case, in 23 A.L.R. 1081.

Master and servant — *negligence in permitting ice to form on sidewalk — liability.* The occupant of property adjoining a sidewalk is held not liable in Pickett v. Waldorf System, 241 Mass. 569, 136 N. E. 64, for injuries to passers-by through the negligence of a carefully selected independent contractor whom he has employed to wash his windows, and who permits water to flow and freeze upon the walk.

An extensive note on non-delegable duty of an employer in respect of work which will in the natural course of events produce injury, unless certain precautions are taken, accompanies this case in 23 A.L.R. 1014.

Municipal corporations — *liability for robbery on street.* That a city is not liable under § 3822 of the General Statutes of 1915, making municipalities liable for the action of mobs within their corporate limits, for the damages sustained by one who is robbed in the street by three or more persons acting together, is held in the Kansas case of Sanger v. Kansas City, 206 Pac. 891, annotated in 23 A.L.R. 294.

Negligence — *of driver of school wagon.* That the negligence of the driver of a school wagon, when engaged in conveying pupils to school, is not imputed to the parents of the child, so as to prevent their recovery for injuries to the child by the concurring negligence of such driver and a stranger, is held in the Indiana case of Union Traction Co. v. Gaunt, 135 N. E. 486, annotated in 23 A.L.R. 649.

Negligence — *of one beneficiary — not complete bar.* Where only one of several beneficiaries is negligent, his negligence is held, in Kokesh v. Price, 136 Minn. 304, 161 N. W. 715, not to be a bar to all recovery, and, where no apportionment or reduction to the exten of his interest is asked for, full recovery will be allowed.

The note which follows this decision in 23 A.L.R. 643, discusses the question of contributory negligence of one or more of the beneficiaries in an action for death as affecting the rights of other beneficiaries who are not negligent.

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Negligence — *fall of material from building — independent contractor — liability of property owner.* Using a stepladder in applying calcimine to the walls of an upper story of a building flush with the sidewalk is held in Drennen Co. v. Jordan, 181 Ala. 570, 61 So. 938, not to be so dangerous as to render the property owner liable for injury to a passer-by by the negligence of an independent contractor in using the ladder so carelessly as to precipitate calcimine through a window to the sidewalk.

An extensive note on the liability of an employer as predicated on the ground of his being subject to a nondelegable duty in regard to injured person, follows the above case, in 23 A.L.R. 981.

Pardon — *power to pardon for civil contempt.* That the governor cannot pardon one committed to prison in punishment for civil contempt, is held in the Wisconsin case of State ex rel. Rodd v. Verage, 187 N. W. 830, annotated in 23 A.L.R. 491.

Parent and child — *neglect to support child — when not shown.* That a man cannot be said wilfully to neglect and refuse to support his child where his wife, without reasonable excuse and with the acquiescence and aid of her father, keeps it away from him, is held in the Virginia case of Butler v. Com. 110 S. E. 868.

The subject of criminal liability of a father for failure to support his child who is living apart from him without his consent, is discussed in the note appended to this case, in 23 A.L.R. 861.

Railroads — *abandonment — right of private action.* One whose business is served by the spur track of a railroad cannot, it is held, in Helena & Livingston Smelting & Reduction Co. v. Northern Pac. R. Co. 62 Mont. 205, 204 Pac. 370, maintain an action for damages against the railroad company for discontinuing the track, although the effect is to make the transportation of his produce much more difficult.

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This case is accompanied in 23 A.L.R. 546, by a note on the right to damages because of abandonment or relocation of railway line, station, or sidetrack.

Railroad — *killing animal — insufficient headlight.* In a suit for damages for killing a mule by a train running at a speed of 45 miles per hour, at night, in the country, the railroad company is held not liable in Payne v. Hamblin, 126 Miss. 756, 89 So. 620, annotated in 23 A.L.R. 146, where the engineer did everything reasonably required to prevent the injury after discovering the animal upon the track, the train being properly equipped with appliances in good condition; and this is true even though the headlight was incapable of showing the object on the track at such distance as would enable the engineer to stop his train after seeing it. At such a place, night or day, it is not, ordinarily, negligence per se to run at a speed of 45 miles per hour with proper and standard equipment.

Record — *Torrens Act — who is bona fide purchaser.* One purchasing a title registered under the Torrens Act, when a stranger is in actual, open, notorious, and visible occupancy of the property, without any attempt to ascertain the extent of his interest, is held in the California case of Follette v. Pacific L. & P. Corp. 208 Pac. 295, not to be a bona fide purchaser within the meaning of the section of the Torrens Law giving bona fide purchasers of titles registered under such act superiority over all except certain specified classes of persons, and he therefore cannot assert a title superior to that of one in such possession.

The note which accompanies this decision in 23 A.L.R. 965, treats of the possession of a third person as affecting one's character as a bona fide purchaser within the provisions of the Torrens Law which protect bona fide purchasers of titles registered under the act.

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Sale — *Time to cash check — right of buyer.* In the absence of notice that cattle of large value must be paid for in cash, a substantial buyer is held entitled in the Tennessee case of Farris v. Ferguson, 242 S. W. 873, to time to secure the money from the bank on the following day, when his checks tendered in payment are refused by the seller after banking hours of the day of sale; at least, where from previous dealings the buyer has reason to believe that the checks would be accepted.

The right of a purchaser to opportunity to pay in cash where tender has been made in other medium, is discussed in the note appended to this case, in 23 A.L.R. 624.

Sale — *validity as against purchaser with notice.* A purchaser of real estate who takes with notice of a conditional-sale agreement by which title to machinery attached to the real estate is reserved in the seller until payment of the purchase price, is held, to take subject to such agreement, in the South Carolina case of Liddell Co. v. Cork, 113 S. E. 327.

A note on the rights of a seller of fixtures retaining title or lien as against purchasers or encumbrancers of the realty, is discussed in 23 A.L.R. 800.

Tax — *exemption of labor union.* A building of a corporation organized to maintain such building for the use of labor unions, in which are maintained classes for instruction in the branches of trade represented by the several unions, is held, in the Tennessee case of Nashville Labor Temple v. Nashville, 243 S. W. 78, annotated in 23 A.L.R. 807, to be within a statute exempting from taxation all property belonging to any educational institution.

Tax — *succession — deduction of Federal tax.* A provision for deduction of the expenses of administration in ascertaining the net estate for the purpose of imposing a state, estate,

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or succession tax, is held not to include the Federal estate tax, in Hazard v. Bliss, 43 R. I. 431, 113 Atl. 469, annotated in 23 A.L.R. 826.

Tender — *sufficiency of check.* That failure to make objection to a check as tender of payment is a waiver of the right to demand payment in money, is held in Gaunt v. Alabama Bound Oil & Gas Co. 281 Fed. 653, annotated in 23 A.L.R. 1279.

Weights and measures — *liability of public weigher to buyer.* Public weighers, knowing that a buyer will rely on their certificate of weights in making their payment for goods bought, are held, in Glanzer v. Shepard, 233 N. Y. 236, 135 N. E. 275, annotated in 23 A.L.R. 1425, to owe him a duty, imposed by law, of exercising care in furnishing correct weights, although they are employed by the seller, a breach of which will render them liable for loss thereby inflicted upon the buyer.

Workmen's compensation — *aggravation of disease by gas — accident.* The unexpected aggravation of latent tuberculosis in an employee by entering a flue carrying deadly gases from a fire, for the purpose of making repairs, is held to be the result of an accident within the meaning of the Workmen's Compensation Act, in the Utah case of Tintic Milling Co. v. Industrial Commission, 206 Pac. 278, annotated in 23 A.L.R. 325.

Workmen's compensation — *injury on street.* If work required of an employee involves an exposure to perils of the street, the protection of the Workmen's Compensation Act is held to extend to the employee while he is passing along the street in the performance of his duties, in Katz v. A. Kadans & Co. 232 N. Y. 420, 134 N. E. 330, annotated in 23 A.L.R. 401.

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A.L.R. Annotations in Volume 22 Include Notes on the Following Subjects:

Agisters — Liability of agister to owner for damages from escape of animals. 23 A.L.R. 265.

Appeal — Violation of court rule by trial court as ground for reversal or new trial. 23 A.L.R. 52.

Automobiles — Liability of owner under "family purpose" doctrine for injuries by automobile while being used by member of his family. 23 A.L.R. 620.

Auction — Liability of auctioneer or clerk of auction to buyer in respect of title, condition, or quality of property sold. 23 A.L.R. 122.

Banks — Right of bank to repudiate payment to foreign correspondent. 23 A.L.R. 1232.

Bills and notes — Time of negotiation of check as affecting one's character as a holder in due course. 23 A.L.R. 1205.

Burglary — Burglary without breaking. 23 A.L.R. 288.

Carrier — Liability of carrier for baggage not accompanied by passenger. 23 A.L.R. 1446.

Checks — Constitutionality of "worthless check" acts. 23 A.L.R. 459.

Constitutional law — Power of legislature to grant extra compensation for past services of individual public officer or employee. 23 A.L.R. 612.

Contempt — Forcing party or prosecuting witness to withdraw or not to institute action or proceeding as contempt of court. 23 A.L.R. 187.

Contracts — Measure of recovery by building contractor where contract is substantially, but not exactly, performed. 23 A.L.R. 1435.

Contracts — Validity and construction of contract for sale of season's output. 23 A.L.R. 574.

Corporations — Shares of corporate stock as within statute enabling assignee to maintain action in his own name. 23 A.L.R. 1322.

Damages — Right of trespasser to credit for expenditures in producing, as against his liability for value of, oil or mineral. 23 A.L.R. 193.

Damages — Right to recover for mental pain and anguish alone, apart from other damages. 23 A.L.R. 361.

Discovery — Power to compel production of corporate books to aid in assessing holder of stock or his estate. 23 A.L.R. 1351.

Escheat — Necessity of judicial proceeding to vest title to real property in state by escheat. 23 A.L.R. 1237.

Explosions — Applicability of res ipsa loquitur in case of boiler explosions. 23 A.L.R. 484.

Fraudulent conveyance — Conveyance in consideration of future support as fraudulent against creditors. 23 A.L.R. 584.

Homicide — Homicide by wanton or reckless use of firearms without express intent to inflict injury. 23 A.L.R. 1554.

Husband and wife — Liability of husband for services rendered by wife in carrying on his business. 23 A.L.R. 18.

Injunction — Right, in the absence of express contract, to enjoin former employee from soliciting complainant's customers. 23 A.L.R. 423.

Insurance — Automobile liability insurance. 23 A.L.R. 1472.

Insurance — Meaning of phrase "in good standing" employed in contract of mutual benefit association with member. 23 A.L.R. 340.

Insurance — Whom does agent represent in soliciting or taking application for reinstatement of insurance policy. 23 A.L.R. 1201.

Landlord and tenant — Right of lessee in absence of covenant to assign lease or sublet premises. 23 A.L.R. 135.

Master and servant — Right of parent who consents to or acquiesces in employment of child under statutory age to recover for latter's injury or death while in such employment. 23 A.L.R. 635.

Negligence — Contributory negligence of parent as bar to an action by parent or administrator for death of child. 23 A.L.R. 670.

Nuisance — Noise from operation of industrial plant as nuisance. 23 A.L.R. 1407.

Nuisance — Undertaker's establishment as a nuisance. 23 A.L.R. 745.

Option — Destruction of or damage to building as affecting rights of parties to option. 23 A.L.R. 1225.

Public service commission — Cotton industry as affected with a public interest. 23 A.L.R. 1478.

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Travels Out of the Record

The Speed Demon. "The road to the police court," mused the motorist, "is paved with good pedestrians."

The Passing Show (London).

Light-Fingered Ancestors. "You should see Priscilla's collection of old snuffboxes handed down from her great-grandmother."

"Then the old lady took snuff?"

"No, only snuffboxes. She was a kleptomaniac."

—Boston Transcript.

Mark of Greatness. "This crime specialist says he has no clue."

"Then he must be a great detective."

"Why so?"

"No ordinary detective ever makes a confession like that."

—Birmingham Age-Herald.

Money or Life. Tim O'Brien had unfortunately figured in one or two accidents, but this time he was one of the occupants of the car who were considered seriously injured, and was rushed off to the hospital to be operated on. He had partially recovered from the anesthetic and was looking round in dazed condition. As the nurse approached his bedside, he asked feebly:

"Where am I? What is this place?"

The nurse took his hand gently.

"You have been very badly injured in an automobile accident, but you will recover," she replied.

"Recover!" said Tim in a high-pitched voice, and tried to raise himself up. "Recover! How much?"

—Everybody's Magazine.

Sanity First. "You haven't forgotten that $5 you owe me, have you?"

"No; I have it in mind."

"Well, for goodness sake, don't lose your mind."

—Boston "Transcript."

No Evidence. One afternoon a stranger debarked from a train at a hustling town in the West and headed up the street. Finally he met a man who looked like a native.

"Pardon me," said the stranger, "are you a resident of this town?"

"Yes, sir," was the ready rejoinder of the other. "I have been here something like fifty years. What can I do for you?"

"I am looking for a criminal lawyer," responded the stranger. "Have you one here?"

"Well," said the native reflectively, "we think we have, but we can't prove it on him."

—Washington Herald.

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Sale — Taking possession of property conditionally sold as affecting action previously commenced for purchase price. 23 A.L.R. 1462.

Statute of frauds — Signing of contract by agent of undisclosed principal as satisfying Statute of Frauds. 23 A.L.R. 932.

Taxes — Deduction of succession tax paid in other state before computing local succession tax. 23 A.L.R. 852.

Taxes — Inheritance or succession tax on property covered by power of appointment. 23 A.L.R. 738.

Taxes — Leasehold estate in exempt property as subject of tax or special assessment. 23 A.L.R. 248.

Taxes — Payment of tax assessment which improperly describes property owned by taxpayer as good payment on that property. 23 A.L.R. 79.

Trial — Duty of jury to follow instruction as to amount of party's liability if liable at all. 23 A.L.R. 305.

Trial — Presumption from derailment as requiring submission of carrier's negligence to jury in action by passenger, notwithstanding uncontradicted evidence negativing negligence. 23 A.L.R. 1214.

Wills — Illegitimate child as a "child" within statute limiting the right or amount of disposition by will by one survived by a child. 23 A.L.R. 400.

Workmen's compensation — Injury received while doing prohibited act. 23 A.L.R. 1161.

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Courtesy of the Road.—Gentleman Crook: "Pardon me, sir, but haven't I held you up before?"

Weary Victim: "Well, the gun looks familiar, but I've forgotten the face."— Octopus.

She Brought it on Herself. A well-dressed, portly woman had boarded the trian at the last minute, and inadvertently taken a seat in the car reserved for smokers.

In a few moments a man directly behind began filling his pipe, and shortly tobacco smoke pervaded the whole car.

"Sir," she announced in a stern voice, "smoking always makes me ill."

The offender puffed contentedly and at the same time replied: "It really does? Well, then, take my advice madam, and give it up."

—Everbody's Magazine.

A Smoke Screen. Customer: "How much is smoked ham?"

Dealer: "Sixty-five cents a pound."

Customer: "What makes it so high?"

Dealer: "The scarcity of smoke."

—Detroit "News."

All Made Clear.—"Your Honor, I was not intoxicated."

"But this officer says you were trying to climb a lamp-post."

"I was, your Honor. A couple of cerise crocodiles had been following me around all day, and I don't mind telling you that they were getting on my nerves."—Arkansas Utility News.

Misnomer. He had been arrested, but the police had permitted him to go on his promise to appear in court at a certain time. He was there. His case was called.

"John McMora," cried the clerk. No reply coming, he repeated it.

"Judge, I'm here," called a voice, "but that ain't my name."

—Democrat and Chronicle.

Not Interested. The lumberjack was being cross-examined in a north woods murder trial. "You say the murder occurred on the night of March 5th?" questioned the attorney for the defense.

"Ya-as," said the Swede.

"You say," continued the lawyer, "you saw the defendant murdering the woman—saw it with your own eyes?"

"Ya-as," said the lumberjack.

"You also say," concluded the triumphant attorney, "that at the time you saw the murder you were two miles away from the scene of the crime?"

"Oh, vell," said the Swede stretching his arms and legs, "Ay don't care much for this trial anyhow."

—Ottawa Evening Citizen.

The Legal Way Round. A lawyer thus illustrates the language of his craft: "If a man were to give another an orange, he would simply say, 'Have an orange.' But when the transaction is intrusted to a lawyer to be put in writing, he adopts this form: 'I hereby give and convey to you, all and singular, my estate and interests, right, title, claim and advantages of and in said orange, together with all its rind, juice, pulp, and pips, and all rights and advantages therein, with full power to bite, cut, suck, and otherwise to eat the same, or give the same away with or without the rind, skin, juice, pulp, or pips, anything hereinbefore, or hereinafter, or in any other means of whatever nature or kind whatsoever to the contrary in any wise notwithstanding.'

"And then another lawyer comes along and takes it away from you."

—Boston Globe.

Legal Advice. "I may have some trouble in getting you out of this. You'd better plead insanity."

"But, Lawyer Glibwitz, I'm just as sane as you are."

"Maybe you are, but as long as we are in court keep it to yourself."

—From the Birmingham Age-Herald.

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